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January 18, 2019

TO: All Casino General Managers and Counsel

**Department of Justice's Opinion – "Reconsidering Whether the  
Wire Act Applies to Non-Sports Gambling"**

As we all know by now, the Department of Justice's opinion "Reconsidering Whether the Wire Act Applies to Non-Sports Gambling" made public on January 14, 2019 has been the subject of intense scrutiny within the gaming industry. That Opinion reverses a 2011 Department of Justice Opinion which previously provided a view that the Wire Act's prohibitions on the interstate transmission of bets and wagers only applied to sports wagering and not to other types of gambling which could be conducted via the internet in jurisdictions which have made the activity legal. The 2011 Opinion paved the way for States to legalize internet gaming including slots, table games and poker, as well as to enter into interstate shared liquidity agreements to enhance poker products available to member states. The just-released Opinion, however, places significant restrictions on the future conduct of internet-based gaming.

Undoubtedly, the Wire Act applies to the "interstate" transmission of (1) bets or wagers on sporting events and, as per the new Opinion, also to the interstate transmission of (2) wire communications which entitle the recipient to receive money or credit as a result of a bet or wager, or (3) for information assisting in the placing of bets or wagers. These latter two items were previously thought to apply only to sports wagering but now are deemed to apply to any forms of gambling conducted via wire or internet. The Opinion does not, however, negate the premise that "intrastate" activity as provided for by State law is permitted. Thus, with any forms of internet or mobile gambling, it appears that diligence in assuring that the transmission of bets and wagers, payments and credits as a result of bets or wagers, as well as the information assisting in placing those bets and wagers [subject to § 1084(b)], does not cross state lines is paramount.

As Pennsylvania continues to implement the General Assembly's gaming expansion legislation, Act 42 of 2017, and as you, as certificate holders and operators licensed by the Board, continue to move forward to expand your gaming offerings, it is vital that you examine your proposed gaming operation in Pennsylvania to ensure that you are in compliance with the

Department of Justice's interpretation of the Wire Act. Specifically, while Board regulation § 809.3 - Location of equipment, provides that "the interactive gaming devices and associated equipment may be located in a restricted area on the premises of the licensed facility, in an interactive gaming restricted area within the geographic limits of the county in this Commonwealth where the licensed facility is situated or any other area, located within the United States, provided the location adheres to [enumerated conditions]", Regulation 809.3 was promulgated prior to the recent Department of Justice Opinion. As a result of the Opinion and at this time, we no longer believe it is consistent with law as articulated in the Opinion to locate the interactive gaming devices and associated equipment in any jurisdiction other than in Pennsylvania.

While we fully recognize that this change may alter the plans of licensees in implementing expanded gaming offerings, it is a change not of the Board's making but one commanded by the changing interpretation by federal law enforcement authorities. It is your obligation to comply with the federal law in all respects in establishing your gaming operations which must now be entirely "intrastate." Please examine your prior submissions to the Board which may be impacted by this requirement and provide an updated narrative as to how you will structure your operations to assure compliance with the new Department of Justice Opinion on the applicability of the Wire Act. In addition, you should examine the effect of the Opinion on the topic of payment processing of wagers, as well as any anticipated issues or effects the Opinion may create for banking institutions with whom you interact.

Please note that the Deputy Attorney General issued a memo to United States Attorneys and the Director of the Federal Bureau of Investigation stating that as an exercise of discretion, the Department of Justice Attorneys should refrain from applying the new interpretation in criminal or civil actions to persons who engaged in conduct that violated the Wire Act in reliance on the prior 2011 opinion for a period of 90 days – meaning that enforcement could be expected to persons and activities not in conformance with this opinion on or after April 15, 2019. In order to minimize risk to Pennsylvania licensees and the gaming industry in the Commonwealth, I am requesting that you provide your plans for complying with the Wire Act, as now interpreted, within the next 30 days.

I want to express my thanks in advance as we navigate through this change to implement a fully intrastate gaming environment.

Sincerely yours,



Kevin F. O'Toole  
Executive Director

KFO:pll

cc: R. Douglas Sherman, Chief Counsel, PGCB  
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